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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/583,693

05/31/2007

Leslie Pape

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3509

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EXAMINER

ANDERSON, AMBER R

ART UNIT

PAPER NUMBER

3765

MAIL DATE

DELIVERY MODE

10/27/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/583,693	Applicant(s) PAPE, LESLIE	
	Examiner AMBER R. ANDERSON	Art Unit 3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 February 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26,27,30,31,35 and 36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 26,27,30,31,35 and 36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

This is in response to RCE filed February 17, 2010. Claims 26, 27, 30, 31, 35, and 36 are currently pending of which all Claims have been amended. Applicant's arguments are moot in view of the new grounds of rejection.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 30, 35, and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Nelson (USPN 4,366,813).

Regarding Claim 30, Nelson discloses a resistance exercise clothing article 10, wherein the device is capable of being a resistance exercise article) comprised of clothing material (12) including one or more portions to be worn over one or more joints of a wearer (Fig. 1-3) and, incorporated onto or into the portion or each of said portions, a plurality of elongate resilient pieces (28) which extend through the portion or each of said portions (Fig. 1-3), and each of which, when not under external stress, has a particular shape and, when the article is not being worn, maintains substantially that

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shape against the weight of the clothing material (wherein the resilient pieces are capable of holding their shape when held in the device and not worn by a wearer), and which are arranged parallel to and co-extensively with each other within the article (Fig. 1-3) so that, when the article is received over the joint(s) of the body, the plurality or each plurality of elongate resilient pieces extends over the joint(s) (Fig. 1-3) and, when the joint(s) bend(s), the clothing material tends to maintain the parallel positioning of the elongate resilient pieces and the elongate resilient pieces bend to provide most of exercise rather than stretch longitudinally to provide most of exercise resistance (Fig. 7, wherein the resilient pieces provide resistance when bending), wherein each elongate resilient piece is a helical spring having its longitudinal axis extending along said piece (28, Col. 2, line 55-58, Fig. 8-9 wherein it can be seen that a longitudinal axis extends the length of the piece).

Regarding Claim 35, Nelson discloses a resistance exercise clothing article (10, wherein the device is capable of being a resistance exercise article) comprised of clothing material (12) including one or more portions to be worn over one or more joints of a wearer (Fig. 1-3) and, incorporated onto or into said portion(s), one or more elongate resilient pieces (28) which extend(s) through said portion(s) (Fig. 1-3), each of which, when not under external stress, has a particular shape and, when the article is not being worn, maintains substantially that shape against the weight of the clothing material (wherein the resilient pieces are capable of holding their shape when held in the device and not worn by a wearer), and each elongate resilient piece taking the form

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of any one of the group consisting of: a strip of elastomeric material bonded to the clothing material and of circular segmental cross-section to provide a flat face giving a relatively significant area for bonding by a bonding agent, a helical spring having its longitudinal axis extending along said piece (28, Col. 2, line 55-58, Fig. 8-9 wherein it can be seen that a longitudinal axis extends the length of the piece), and an elastomeric rod of essentially circular cross-section.

Regarding Claim 36, Nelson discloses wherein the or each elongate resilient piece is one of said helical spring and said elastomeric rod and is encapsulated in a pocket at said clothing material (24, 25, 26).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 26 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Karecki (US PG Pub 2001/0029224) in view of Holt et al. (USPN 5,555,562).

Regarding Claim 26, Karecki discloses a resistance exercise clothing article comprised of clothing material (1012) including one or more portions to be worn over

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one or more joints of a wearer (Fig. 5, 6, and 9) and, incorporated onto or into the portion or each of said portions, elongate resilient pieces (1020, 120, 300) which extend through the portion or each of said portions, and each of which, when not under external stress, has a particular shape and, when the article is not being worn, maintains substantially that shape against the weight of the clothing material, the elongate resilient pieces extend over the joint(s) and, when the joint(s) bend(s), the clothing material tends to maintain the positioning of the elongate resilient pieces and the elongate resilient pieces bend to provide most of exercise rather than stretch longitudinally to provide most of exercise resistance (Abstract, Fig. 5, 6, and 9), wherein each elongate resilient piece takes the form of a strip of elastomeric material bonded to the clothing material by a bonding agent (Para. [0069]). Karecki does not disclose a plurality of elongate resilient pieces which are arranged parallel to and co-extensively with each other within the article so that, when the article is received over the joint(s) of the body and when flexed the resilient pieces maintain parallel positioning. Holt et al. teach an exercise clothing (10) with elongate resilient pieces (80, 82, 84, 86, 92, 93, 94, 95) wherein a plurality are located over joint and are in parallel positioning (Fig. 2) in order to increase and provide uniform resistance to specific areas of the body.

Therefore, it would have been obvious to one of ordinary skill in the art would have provided the device of Karecki with a plurality of elongate resilient pieces over each section in parallel positing, as taught by Holt et al., in order to increase and provide uniform resistance to specific areas of the body.

Regarding Claim 27, Karecki discloses a flat face giving a relatively significant area for bonding (Fig. 11). Karecki does not disclose the elongate resilient pieces having a circular segmental cross section. However, applicant's specification is silent as to the criticality of circular segmental cross section other than the fact that it has a flat surface for bonding and even further discloses other cross-sectional shapes to perform the same function.

Therefore, it would have been an obvious matter of design choice to one skilled in the art at the time the invention was made to construct the elastomeric rod of Holt et al. with a cross-section having an circular segmental cross section, since applicant has not disclosed that this solves any stated problem or is anything more than one of numerous shapes or configurations a person of ordinary skill in the art would find obvious for the purpose of providing an exercise garment with elongate resilient pieces. In re Dailey and Eilers, 149 USPQ 47 (1996).

5. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Holt et al. (USPN 5,555,562).

Holt et al. discloses a resistance exercise clothing article (10, Abstract) comprised of clothing material including one or more portions to be worn over one or more joints of a wearer (Fig. 1-4) and, incorporated onto or into the portion or each of said portions, a plurality of elongate resilient pieces (80, 82, 84, 86, 92, 93, 94, 95) which extend through the portion or each of said portions (Fig. 1 & 2), and each of which, when not under external stress, has a particular shape and, when the article is

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not being worn, maintains substantially that shape against the weight of the clothing material (Fig. 5 & 6), and which are arranged parallel to and co-extensively with each other within the article so that, when the article is received over the joint(s) of the body, the or each plurality of elongate resilient pieces extends over the joint(s) and, when the joint(s) bend(s), the clothing material tends to maintain the parallel positioning of the elongate resilient pieces (Fig. 1-4) and the elongate resilient pieces bend to provide most of exercise resistance rather than stretch longitudinally to provide most of exercise resistance (Col. 2, lines 66-67), wherein each elongate resilient piece is an elastomeric rod of a substantially circular cross-section (Fig. 5 & 6, Col. 2, lines 60-93). Holt does not specifically disclose the elastomeric rod having an essentially circular cross-section. However, applicant's specification is silent as to the criticality of an essentially circular cross-section and even further discloses other cross-sectional shapes to perform the same function.

Therefore, it would have been an obvious matter of design choice to one skilled in the art at the time the invention was made to construct the elastomeric rod of Holt et al. with a cross-section having an essentially circular shape, since applicant has not disclosed that this solves any stated problem or is anything more than one of numerous shapes or configurations a person of ordinary skill in the art would find obvious for the purpose of providing an exercise garment with an elastomeric rod. In re Dailey and Eilers, 149 USPQ 47 (1996).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AMBER R. ANDERSON whose telephone number is (571) 270-5281. The examiner can normally be reached on Mon-Thur, 8am - 6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on (571) 272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/AMBER R ANDERSON/
Examiner, Art Unit 3765

October 21, 2010

/GARY L. WELCH/
Supervisory Patent Examiner, Art Unit 3765